

S.B.Cr.Misc. Bail App. No. 5107/2007
(Gopi Ram Vs. State of Rajasthan)

Date of order : 21/11/2007

HON'BLE MR.H.R.PANWAR, J.

Mr. M.K.Garg for the petitioner.

Mr. Ashok Upadhyay, Public Prosecutor.

Mr. Pradeep Choudhary for the complainant.

Heard learned counsel for the petitioner and the Public Prosecutor for the State as also the counsel appearing for the complainant. Perused the order impugned and challan papers.

It is contended by learned counsel for the petitioner that a complaint was filed by the prosecutrix in the Court of Additional Chief Judicial Magistrate, Deedwana on 30.5.2007 alleging therein that the petitioner entered in her house on 27.5.2007 at 10.00 PM and committed rape. She stated that the occurrence was witnessed by one Kheturam and Rukmadevi. Learned counsel for the petitioner submits that the prosecutrix filed a complaint before the police on 28.5.2007 at 2.00 P.M. stating therein that she is resident of Maulasar. Her husband has been living abroad for 6-7 years. The son of the elder brother of her husband used to take liquor and after consuming liquor used to

come to her house and abuse her. He has been asked not to come to her house but she has been threatened by Gopiram and therefore, she apprehends danger to her life. This report was lodged on 28.5.2007. In her statement also, she did not say anything about the rape. What she stated is that the petitioner used to consume liquor and after consuming liquor, he used to come to her house and demand the money saying that she owes some loan amount belonging to the petitioner i.e. 20,000/- out of Rs. 25,000/-. There had been a money transaction between her and the petitioner , however, she came with a case that the petitioner did not give any amount to her, whereas the petitioner claims the amount as stated above. In that proceeding, the statement of the prosecutrix was recorded on 29.5.2007. The statements of other witnesses Khetaram were recorded on 29.5.07, Gordhanram, Dhannaram, Smt. Jhamku, Jagdishram and Madanlal etc. on 3.6.07. These witnesses do not state that there was any occurrence of rape or the prosecutrix informed that she has been subjected to rape. What these witnesses stated is that there was a money transaction and with regard to money transaction, the petitioner came to the house of the prosecutrix on 27.5.2007 at 8.00 PM and started abusing and demanding amount due to her.

On careful perusal of the statements of witnesses and even the statement of the prosecutrix recorded on 29.5.2007 and the

report filed by her on 28.5.2007 at 2.00 PM, there is no whisper of any occurrence taken place on 27.5.2007 committing rape. The time of occurrence which has been reported to the police on 28.5.07 at 2.00 PM at about 8.00 PM and the case subsequent by way of complaint instituted by the prosecutrix is between 8-9 PM almost in close proximity. According to learned counsel for the petitioner had there been a case of rape, then at least next day, when the prosecutrix reported to the police, she would have narrated the occurrence of rape and as such according to learned counsel no such occurrence took place and if at all any occurrence took place that is with regard to money transaction and the prosecutrix failed to return the amount which the petitioner claims.

On careful perusal of the statement of witnesses, in my view, no explanation is forthcoming with regard to non-disclosure of the offence of rape on 28.5.07 at 2.00 PM by the prosecutrix and in her statement recorded on 29.5.07 as also in the statement of witnesses i.e. Kheta Ram. Without commenting on the merit of the case, looking to the facts and circumstances of the case and the fact of rape has not been stated by Kheta Ram who is the witness as stated by the prosecutrix, having considered the oral arguments advanced by both the parties, I think it just and proper to enlarge the accused petitioner on bail.

Accordingly, this bail application filed under Sec. 439 Cr.P.C. is allowed and it is directed that petitioner Gopi Ram S/o Bhagirath be released on bail in FIR No. 78/07 P.S. Molasar, district Nagaur, provided he executes a personal bond for a sum of Rs. 20,000/- with two sound and solvent sureties in the sum of Rs. 10,000/- each to the satisfaction of learned trial court for his appearance before that court on each and every date of hearing and whenever called upon to do so till the completion of the trial.

(H.R.PANWAR), J.

RP